



a new section to be codified at § 1605A of the same title. Section 1605A creates a private, federal cause of action against a foreign state that is or was a state sponsor of terrorism, and provides, *inter alia*, that punitive damages may be awarded. *See* 28 U.S.C § 1605A(c).

Section 1083(c) of the NDAA, which is titled “Application to Pending Cases,” provides that upon motion made by plaintiffs, the amendments to the FSIA made by section 1083 shall apply to any action that (1) was brought under § 1605(a)(7) before January 28, 2008; (2) relied upon that provision as creating a cause of action; (3) has been adversely affected on grounds that § 1605(a)(7) fails to create a cause of action against the foreign state; and (4) as of the date of enactment (January 28, 2008), is before the courts in any form, including on appeal or motion under rule 60(b) of the Federal Rules of Civil Procedure. *See* Pub. L. No. 110-181, 122 Stat. 3, § 1083(c)(2)(A); *see also* *Simon v. Republic of Iraq*, Nos. 06-7175, 06-7178, slip op. at 9 (D.C. Cir. June 24, 2008) (recognizing that section 1083(c) sets forth the circumstances upon which plaintiffs with pending cases may invoke § 1605A). Thus, plaintiffs’ motion for relief under section 1083(c) should be granted only if the action meets each of the four requirements set forth in that provision.

Plaintiffs’ motion does not satisfy the fourth requirement of section 1083(c)(2)(A)—that the action was “before the courts in any form” as of January 28, 2008. This Court entered a final judgment in favor of plaintiffs on September 29, 2006. The Judgment was not appealed and there were no pending motions before the Court as of January 28, 2008. Nonetheless, plaintiffs assert that this action was before the court as of that date as plaintiffs pursue attachment in aid of execution and execution of the September 29, 2006 Judgment. As Judge Kollar-Kotelly of this Court stated in circumstances nearly identical to those presented here, the suggestion that a case

is “before the court” due to the mere possibility of filing an attachment or executing the judgment, “is inconsistent with the statutory language that requires the case to be before the Court as of January 28, 2008.” *Holland v. Islamic Republic of Iran*, 545 F. Supp. 2d 120, 121–22 (D.D.C. 2008) (Kollar-Kotelly, J.). Accordingly, the instant action was not “before the courts in any form” as of the NDAA’s date of enactment, and therefore plaintiffs’ motion for supplemental relief pursuant to section 1083(c) shall be denied.

A separate order shall issue this date.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, July 22, 2008.